



DELTA STEWARDSHIP COUNCIL

A California State Agency

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March 21, 2014

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Reclamation District 2130
c/o Terry Huffman
Huffman-Broadway Group, Inc.
828 Mission Avenue
San Rafael, CA 94901

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Frank L. Ruhstaller

Executive Officer
Christopher M. Knopp

Via email: thuffman@h-bgroup.com

**RE: Mallard Farms Conservation Bank Initial Study/Mitigated Negative Declaration,
SCH# 2013042006**

Dear Mr. Huffman:

This letter responds to the Notice of Completion (NOC) of a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Mallard Farms Conservation Bank. The staff of the Delta Stewardship Council (Council) has reviewed the draft IS/MND along with supporting exhibits for the Bank Enabling Instrument that we received from you. Based on our review, we have determined that the proposed action to restore a 700-acre site within Suisun Marsh to tidal marsh habitat may be a "covered action" subject to the Delta Plan (as described on pg.2), although that determination ultimately resides with your agency.

Council staff has identified below, for your consideration, several issues that we believe should be addressed in the final IS/MND:

- **Consistency with the Delta Plan:** The final IS/MND should acknowledge the regulatory policies and recommendations of the Delta Plan (effective September 1, 2013) within the IS/MND's description of the project setting. The IS/MND should also discuss any inconsistencies between the project and the Delta Plan, as required by 15125(d) of the CEQA Guidelines. Note, too, that the CEQA Guidelines' Appendix G states that a project that is inconsistent with any applicable land use plan, policy, or regulation may result in a finding of significant impact on biological resources.
- **Biological Resources:** Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be carried out consistent with Appendix 3 of the Delta Plan regulations and ensure that restoration will occur at appropriate elevations. Consider the elevation map included as Appendix 4 in the Delta Plan as a guide to confirm that tidal marsh restoration is suitable for your proposed location.

Delta Plan Policy **ER P5** (23 CCR Section 5009), calls for avoiding introductions of and habitat Improvements for invasive nonnative species. It states, "The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem." The IS/MND should analyze the project's

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

potential to introduce or improve habitat for nonnative invasive species and their potential effects on native species.

- **Respect Local Land Use:** Delta Plan Policy **DP P2** (23 CCR Section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies and the Delta Protection Commission. We understand that concerns have been raised by the Suisun Resource Conservation District that introduction of tidal inundation to the project site will adversely affect adjacent levees that protect nearby managed wetlands, such as those along the Roaring River and within Grizzly Island. Furthermore, the California Department of Fish and Wildlife also expressed the same concerns and submitted a formal comment letter on the IS/MND which states "increased pressure on the Roaring River levee and the Roaring River Distribution System and the flood impacts onto adjacent lands by the creation of the Roaring River levee as an exterior levee for Honker Bay should be fully analyzed in the MND." The final IS/MND should address the concern that the proposed tidal marsh restoration actions will reduce the integrity of levees protecting adjacent properties and threaten their existing beneficial uses. Additionally, you should describe any feasible mitigation measures that will be undertaken, such as armoring the levees along the Roaring River and improving them to function as exterior levees.

"Covered actions": Early consultation and consistency certifications

The Council sets state policy for the Delta through the Delta Plan and coordinates state and local agencies to achieve policy objectives. In addition, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which state and local agencies are required to comply. The Delta Reform Act established a certification process for covered actions to demonstrate compliance with the Delta Plan's regulatory policies. (Please refer to our website: <http://deltacouncil.ca.gov/covered-actions>.)

The Delta Reform Act specifically established a certification process for covered actions to demonstrate compliance with the Delta Plan's regulatory policies (please refer to our website: <http://deltacouncil.ca.gov/covered-actions>). According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if that project is a covered action, and if it is, to certify consistency with the Delta Plan. This certification is subject to appeal to the Council. Should RD 2130 determine the Mallard Farms Conservation Bank project is a covered action, information and analysis will need to be provided that support the consistency certification with Delta Plan. This information may pull text directly from the IS/MND and the Bank Enabling Instrument documents, with potentially a draft certification attached as an exhibit for one of these finalized documents.

Covered actions must be consistent with the Delta Plan's Policy **G P1** (23 CCR Section 5002(b)(3)), which states, "as relevant to the purpose and nature of the project, all covered actions must document use of best available science". Subsequently, the Delta Plan Policy **G P1** (23 CCR Section 5002(b)(4)) requires that "ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management." Adaptive management is an important component of habitat restoration since it helps projects achieve its goals and objectives even with lingering scientific uncertainties and within an environment that is constantly evolving (e.g. sea level rise).

Terry Huffman
Huffman-Broadway Group Inc.
March 21, 2014
Page 3

If RD 2130 determines the Mallard Farms Conservation Bank project is a covered action that requires a certification of consistency with the Delta Plan, we recommend that you initiate early consultation with Council staff to help guide you through the certification process, particularly the documentation of the use of best available science and adaptive management and how RD 2130 will address the concerns raised by local stakeholders and regulatory agencies regarding potential impacts from the Mallard Farms Conservation Bank on the Roaring River Distribution System levees.

I encourage you to contact Jessica Davenport at jdavenport@deltacouncil.ca.gov or (916) 445-2168 with your questions, comments, or concerns. We would like to work with you to ensure the consistency of the Mallard Farms Conservation Bank with the Delta Plan while also avoiding, minimizing or mitigating potential environmental impacts and we look forward to continued coordination to further our related efforts.

Sincerely,



Cindy Messer
Deputy Executive Officer

Cc Steve Chappell, Suisun Resource Conservation District
Jim Starr, California Department of Fish and Wildlife
Bob Batha, San Francisco Bay Conservation and Development Commission
Dean Messer, Department of Water Resources